



Town Board of Trustees

Tuesday, January 11, 2022 at 7:00 pm

**PLEASE SILENCE ALL CELL PHONE AND ELECTRONIC DEVICES.
THANK YOU.**

1. Meeting Information

To watch the live stream of the meeting

The information for the Town's virtual meeting can be found below:

<https://us02web.zoom.us/j/88352914025>

Meeting ID: 883 5291 4025

Passcode: 985010

One tap mobile

+13462487799

2. Call to Order

Royce D. Pindell, Mayor

a. Roll Call

3. Pledge of Allegiance

Royce D. Pindell, Mayor

Attachments:

- **American Flag** (American_Flag.pdf)

4. Approval of Agenda

Royce D. Pindell, Mayor

5. Consent Agenda

Royce D. Pindell, Mayor

a. December 14, 2021 - Regular Meeting Minutes

Attachments:

- **December 14, 2021 - Regular Meeting Minutes** (12-14-2021_-_Regular_Meeting_Minutes.pdf)

Public Comments on Items Not Scheduled for Public Hearing

The Board of Trustees welcomes you. Thank you for joining us virtually for our Town of Bennett Board of Trustees Meeting. If you are not speaking, we ask that you please mute your microphone. For public comment please sign up in the chat box. If you are on the phone, once we get through the chat box we will call for any other comments for items not on the agenda.

Your comments will be limited to three (3) minutes. The Board may not respond to your comments this evening, rather they may take your comments and suggestions under advisement and provide direction to the appropriate member of Town staff for follow-up. Thank you.

Regular Business

6. Action/Discussion Items

a. Intergovernmental Agreement (IGA) Concerning Land Dedications or Payments in Lieu for School Purposes

Resolution No. 898-22 - A Resolution Approving an Intergovernmental Agreement (IGA) Concerning Land Dedications or Payments in Lieu for School Purposes

Trish Stiles, Town Administrator

Melinda Culley, Town Attorney

Attachments:

- **Staff Report Intergovernmental Agreement (IGA) Concerning Land Dedications or Payments in Lieu for School Purposes** (Staff_Report.pdf)
- **Intergovernmental Agreement (IGA) Concerning Land Dedications or Payments in Lieu for School Purposes** (FINAL_2021.12.15_IGA_Land_Dedication_or_In-Lieu_Payment_Bennett_clean_12-16-2021_.pdf)
- **Resolution No. 898-22 - A Resolution Approving an Intergovernmental Agreement (IGA) Concerning Land Dedications or Payments in Lieu for School Purposes** (Reso._No._898-22.pdf)
- **Suggested Motion** (suggested_motion.pdf)

b. Town of Bennett Planning and Zoning Commission Appointments

Christina Hart, Town Clerk

Attachments:

- **Staff Report Town of Bennett Planning and Zoning Commission Appointments** (Staff_Report_P_Z_Appointments.pdf)
- **James Grider Lee Town of Bennett Planning and Zoning Commission Application** (James_Grider_Lee_Planning_Commission_Application.pdf)
- **Wayne Clark Town of Bennett Planning and Zoning Commission Application** (Wayne_Clark_Planning_Commission_Appointment_Application.pdf)
- **Scott Smith Town of Bennett Planning and Zoning Commission Appli**

cation (Scott_Smith_Planning_Commission_Application.pdf)

- **Oath of Office - James Grider Lee** (Oath_of_Office_-_James_Grider_Lee.pdf)
- **Oath of Office - Wayne Clark** (Oath_of_Office_-_Wayne_Clark.pdf)
- **Oath of Office - Scott Smith** (Oath_of_Office_-_Scott_Smith.pdf)
- **Suggested Motion** (suggested_motion.pdf)

c. Town Administrator Performance Review Committee Selection

Royce D. Pindell, Mayor

7. Town Administrator Report

Trish Stiles, Town Administrator

8. Trustee Comments and Committee Reports

Mayor and Trustees

9. Executive Session

Rachel Summers, Deputy Town Administrator

Attachments:

- **Executive Session Script** (0_-_Bennett_Exec_Session_Script_-_Comfort_Inn_PIRA.pdf)

- a. For the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators under C.R.S. 24-6-402(4)(e); Bennett Lodging, Ltd. Third Amendment to Public Improvements Reimbursement and Tax Rebate Agreement**
- b. Return to Open Meeting**
- c. Report from Executive Session**

10. Action/Discussion Items

- a. Bennett Lodging, Ltd. Third Amendment to Public Improvements Reimbursement and Tax Rebate Agreement**

Ordinance No. 734-22 - An Ordinance Approving a Third Amendment to the Public Improvements Reimbursement and Tax Rebate Agreement with Bennett Lodging, Ltd.

Attachments:

- **Staff Report Bennett Lodging, Ltd. Third Amendment to Public Improvements Reimbursement and Tax Rebate Agreement** (1_-_Staff_Report_Third_Amend_-_Comfort_Inn_PIRA.pdf)
- **Comfort Inn, President, Bruce Rahmani's Consideration Letter** (2_-_Bennett_letter_Rachel_request_for_extension_111821.pdf)
- **Third Amendment to the Public Improvements Reimbursement and Tax Rebate Agreement with Bennett Lodging, Ltd. (Redline)** (3_-_Third_Amend_-_Comfort_Inn_PIRA__redline_.pdf)
- **Third Amendment to the Public Improvements Reimbursement and Tax Rebate Agreement with Bennett Lodging, Ltd. (Clean)** (4_-_Third_Amend_-_Comfort_Inn_PIRA.pdf)
- **Ordinance No. 734-22 - An Ordinance Approving a Third Amendment to the Public Improvements Reimbursement and Tax Rebate Agreement**

ent with Bennett Lodging, Ltd. (5_-_Ord._No._734-22_Comfort_Inn_PIRA_T
hird_Amend_.pdf)

- **Suggested Motion** (6_-_suggested_motion.pdf)

11. Adjournment

Individuals with disabilities who need auxiliary aids in attending the meeting may request assistance by contacting the Town Hall at 207 Muegge Way, Bennett, CO 80102-7806, (303) 644-3249. Please give notice at least 48 hours in advance of the meeting to allow for enough time in making the necessary arrangements.

Contact: Christina Hart (chart@bennett.co.us 1303-644-3249 X1001) | Agenda published on
01/07/2022 at 12:29 PM



**TOWN OF BENNETT, COLORADO
BOARD OF TRUSTEES
Regular Meeting
December 14, 2021**

1. CALL TO ORDER

The Board of Trustees of the Town of Bennett met in regular session on Tuesday, December 14, 2021 via hybrid meeting. Mayor Royce D. Pindell called the meeting to order at 7:00 p.m. The following persons were present upon the call of the roll:

Mayor: Royce D. Pindell

Trustees Present: Kevin Barden
Darvin Harrell
Whitney Oakley
Denice Smith - *excused*
Donna Sus
Larry Vittum

Staff Present: Trish Stiles, *Town Administrator*
Taeler Houlberg, *Assistant to the Town Administrator*
Alison Belcher, *Assistant Communications Director*
Danette Ruvalcaba, *Finance and Technology Director*
Sara Aragon, *Community Development Manager*
Steve Hebert, *Planning and Economic Development Manager*
Steve King, *Special Projects Coordinator*
Robin Price, *Public Works Director*
Ricky Martinez, *Assistant Public Works Director*
Dan Giroux, *Town Engineer*
Adam Meis, *Finance and Technology Coordinator*
Melinda Culley, *Town Attorney*
Christina Hart, *Town Clerk*

Public Present: Kathy Smiley, Larry Gayeski, Dave Lewis

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Royce D. Pindell.

3. APPROVAL OF AGENDA

MAYOR PRO TEM HARRELL MOVED, TRUSTEE OAKLEY SECONDED to approve the agenda as presented. The voting was as follows:

YES: Harrell, Oakley, Pindell, Sus, Vittum, Barden
NO: None
EXCUSED: Smith

Mayor Royce D. Pindell declared the motion carried by unanimous vote.

4. CONSENT AGENDA

TRUSTEE VITTUM MOVED, MAYOR PRO TEM HARRELL SECONDED to approve the consent agenda as presented.

YES: Oakley, Pindell, Sus, Vittum, Barden, Harrell
NO: None
EXCUSED: Smith

Mayor Royce D. Pindell declared the motion carried by unanimous vote.

A. Action: Approval of November 23, 2021 Regular Meeting Minutes

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

There were no public comments presented.

5. REGULAR BUSINESS

A. Action/Discussion

1. Public Hearing

2022 Town of Bennett Budget

Resolution No. 894-21 – A Resolution Summarizing Expenditures and Revenues for Each Fund and Adopting a Budget for the Town of Bennett, Colorado, for the Calendar Year Beginning on the First Day of January 2022 and Ending on the Last Day of December 2022 and Adopting the Town of Bennett Schedule of Fees

Resolution No. 895-21 – A Resolution Appropriating Sums of Money to the Various Funds and Spending Agencies, in the Amounts and for the Purposes Set Forth Below, For the Town of Bennett, Colorado for the 2022 Budget Year

Resolution No. 896-21 – A Resolution Levying General Property Taxes for the Tax Year 2021 to Help Defray the Cost of Government for the Town of Bennett, Colorado for the 2022 Budget Year

Mayor Royce D. Pindell called the matter of the town of Bennett 2022 Budget Appropriation to order. The public hearing was opened at 7:12 p.m.

Christina Hart, Town Clerk, stated that in accordance with Colorado State Statute, notice of the public hearing was properly posted and published in the Eastern Colorado News on October 1, 2021. Legal #2522.

Danette Ruvalcaba, Finance and Technology Director, reported to the Board of Trustees of a carry forward in 2022 regarding section 5 of resolution no. 894-21.

There was no public comment presented.

The public hearing was closed at 7:17 p.m.

There were no comments or questions presented by the Trustees. Mayor Pindell reported the budget is the most important discussion during the year. Mayor Pindell thanked staff for their hard work. The Mayor remains cautious of the future.

TRUSTEE VITTUM MOVED, MAYOR PRO TEM HARRELL SECONDED to approve Resolution No. 894-21 – A resolution summarizing expenditures and revenues for each fund and adopting a budget for the Town of Bennett, Colorado, for the calendar year beginning on the first day of January 2022 and ending on the last day of December 2022 and adopting the Town of Bennett schedule of fees. The voting was as follows:

YES: Pindell, Sus, Vittum, Barden, Harrell, Oakley

NO: None

EXCUSED: Smith

Mayor Royce D. Pindell declared the motion passed unanimously.

TRUSTEE OAKLEY MOVED, TRUSTEE SUS SECONDED to approve Resolution No. 895-21 – A resolution appropriating sums of money to the various funds and spending agencies, in the amounts and for the purposes set forth below, for the Town of Bennett, Colorado for the 2022 budget year. The voting was as follows:

YES: Sus, Vittum, Barden, Harrell, Oakley, Pindell

NO: None

EXCUSED: Smith

Mayor Royce D. Pindell declared the motion passes unanimously.

MAYOR PRO TEM HARRELL MOVED, TRUSTEE OAKLEY SECONDED to approve Resolution No. 896-21 – A resolution levying general property taxes for the tax year 2021 to help defray the cost of government for the Town of Bennett, Colorado, for the 2022 budget year. The voting was as follows:

YES: Vittum, Barden, Harrell, Oakley, Pindell, Sus

NO: None

EXCUSED: Smith

Mayor Royce D. Pindell declared the motion passes unanimously.

2. Public Hearing

Bennett Sonic Drive-In Final Development Plan (FDP)

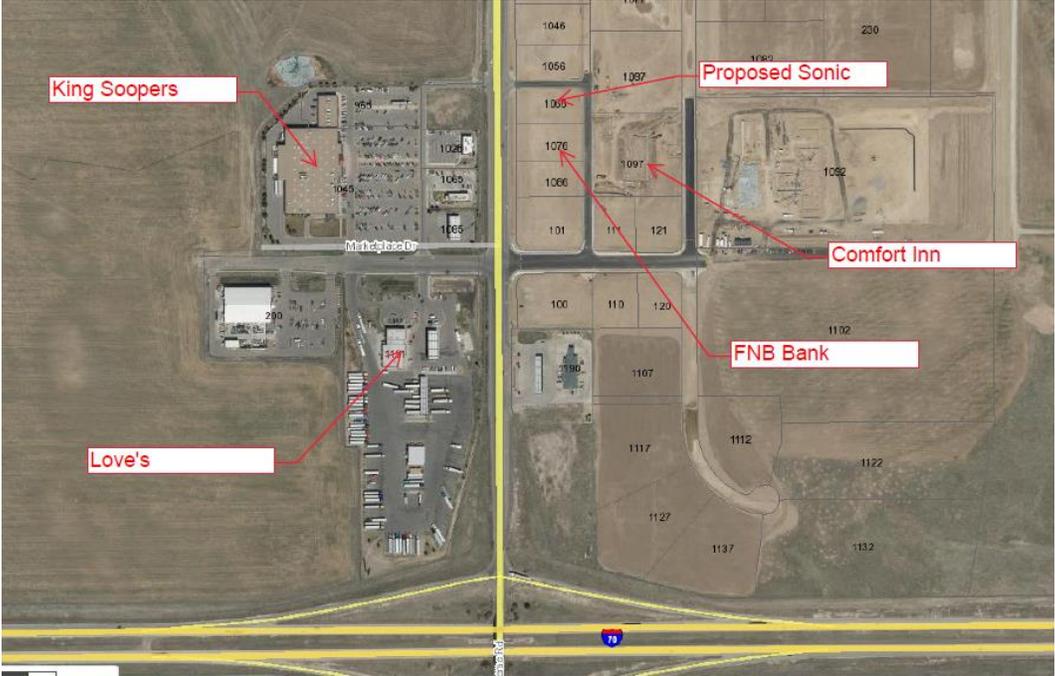
Resolution No. 897-21 – A Resolution Approving the Bennett Sonic Drive-In Final Development Plan (FDP)

Mayor Royce D. Pindell called the matter of the Bennett Sonic Drive-In Final Development Plan to order. The public hearing was opened at 7:21 p.m.

Christina Hart, Town Clerk, state that in accordance with Colorado State Statute, notice of the public hearing was properly posted and published in the Eastern Colorado News on October 1, 2021. Legal # 2553.

Steve Hebert, Planning and Economic Development Manager, reported to the Board of Trustees Case No. 21.22 is a proposed final development plan (FDP) for a 1,227 square-foot Sonic Drive-in restaurant on Lot 4, Filing 1 of the Bennett Crossing Subdivision. The 0.91-acre parcel is located at the southeast corner of CO Highway 79/S. 1st Street and Private Drive B, immediately north of the new FNB Bank. The subject property lies within the Business Commercial subarea zone district in Bennett Crossing.

The site plan shows a shared access with FNB Bank and a drive-thru circling counterclockwise around the restaurant building. There are 19 parking spaces, with several under a canopy. Similar to other Sonic Drive-in restaurants, customers are served outdoors in their vehicle or at outdoor tables. There is no indoor seating. The vicinity map below shows the proposed Sonic Drive-in site and the nearby development.



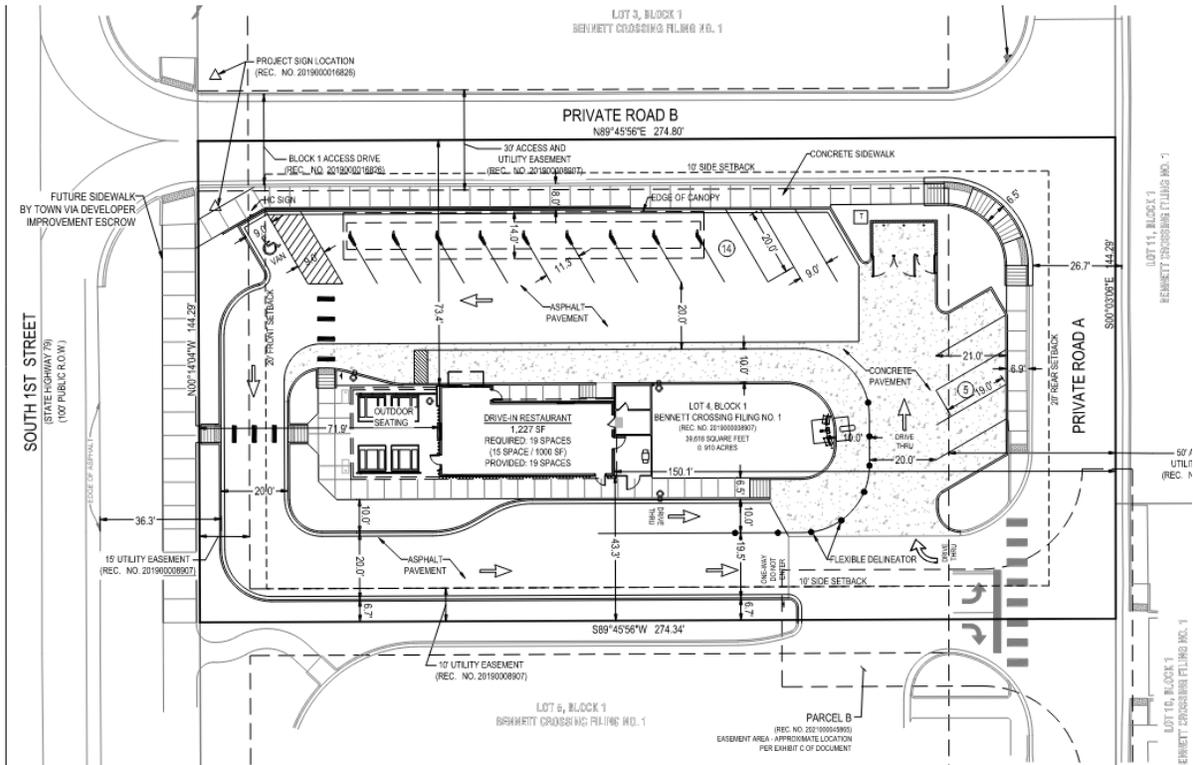
Sonic Site Looking West



Sonic Site Looking Southeast

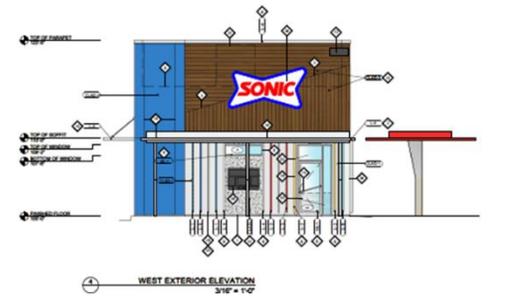
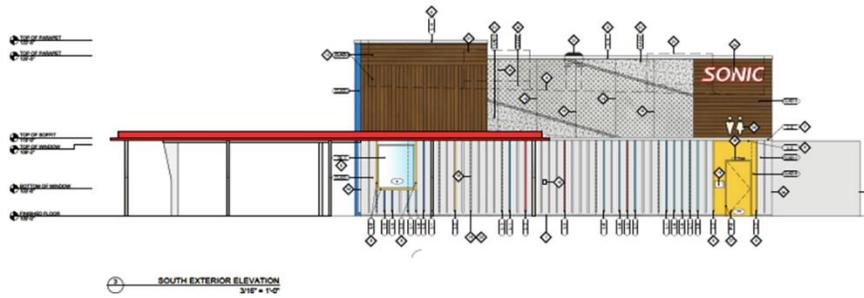
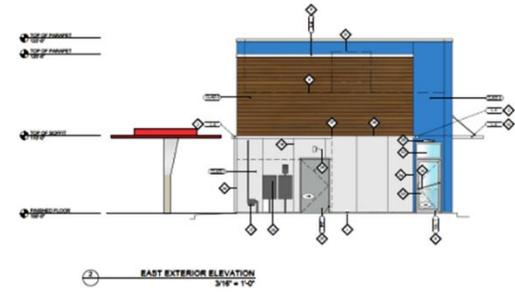
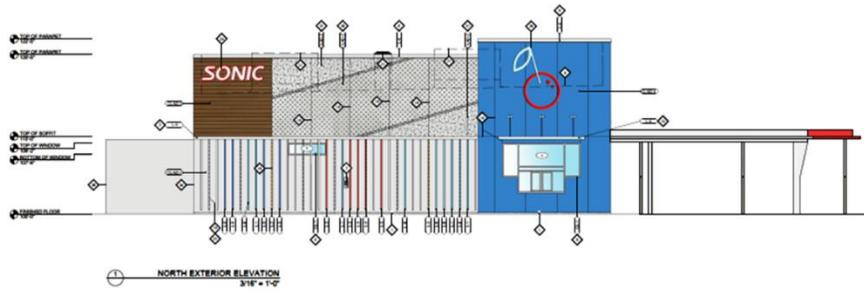
Proposed Site Plan

Below is an excerpt from the final development plan document. The building is located in the center of the site with parking on the north and east sides. The drive-thru lane circulates counterclockwise around the building. Note the shared access with the FNB Bank. This access configuration was approved when the FNB Bank Final Development Plan was approved by the Board of Trustees in September 2020. See the full packet for more site planning details.



The table below summarizes the proposed site improvements compared with the zoning requirements in the Bennett Crossing Outline Development Plan (ODP).

DEVELOPMENT STANDARDS	PROPOSED	LIMIT/REQUIRED
LOT AREA (S.F.)	39,617	NA
BUILDING AREA	1,227	NA
BUILDING FLOOR AREA (FAR)	0.03	0.50
MAX. BUILDING HEIGHT (FT.)	22.5'	50
MINIMUM BUILDING SETBACK (FT.)	72, 43, 150	5, 10, 20
PARKING SETBACK (FT.)	6.7	6
PARKING AND SIDEWALK AREA (S.F.)	31,429	NA
PARKING AND SIDEWALK AREA (%)	79.3%	NA
PARKING COUNT	19	19
ACCESSIBLE PARKING COUNT	1	1
LANDSCAPED AREA (S.F.)	6,961	NA
LANDSCAPED AREA (%)	17.6%	NA



Public Services and Utilities

Water

Water service will be provided by the Town of Bennett.

Sanitary Sewer

Sanitary sewer service will be provided by the Town of Bennett.

Stormwater Management

Stormwater will be collected and conveyed as part of the Bennett Crossing stormwater system.

Access and Traffic

Access is via Private Drive A on the east side of the property.

Fire and Rescue

Bennett-Watkins Fire Rescue will provide service. The applicant shall meet directly with BWFR to review specific site and building plans to assure conformance with International Fire Code standards.

Gas, Electricity and Telecommunications

Natural gas will be provided by Colorado Natural Gas, electricity by CORE Electric Cooperative and telecommunications by Eastern Slope Technologies (ESRTA).

Consistency with the Comprehensive Plan

The proposed restaurant is consistent with the Guiding Principles, Vision Statement and Goals of the 2021 Comprehensive Plan. In particular, it is consistent with the principle of promoting a mix of land uses and enhancing the Town's employment base.

Compliance with the Town's Land Use and Development Regulations

The following is a summary of how the proposal complies with the Land Use and Development regulations in Chapter 16 of the Bennett Municipal Code. Staff analysis includes compliance with the Bennett Crossing Outline Development Plan and other provisions in the Code not explicitly addressed in the ODP.

1. Conformance with the Bennett Crossing Outline Development Plan

- a. **Permitted Uses:** The proposed drive-in restaurant use is allowed as a permitted use-by-right in the Bennett Crossing Business Commercial subarea zone district.
- b. **Building Height:** The proposed building height of 22.5 feet is well below the maximum allowed height of 50 feet.
- c. **Maximum Lot Coverage:** The proposed lot coverage for buildings and parking is below the maximum of 80%.
- d. **Floor Area Ratio (FAR):** The proposed FAR of .03 is less than the maximum of .5
- e. **Minimum Setbacks:** The proposed front, side and rear building setbacks and parking lot setbacks all meet or exceed the minimums outlined in the ODP.
- f. **Connectivity:** Pedestrian connections to the store are provided by sidewalks along Private Drives A and B and a future regional trail along 1st Street.
- g. **Building Orientation and Site Design:**
 - i. The main building is well articulated on all four sides with attention to materials, entrances, window patterns and detailing. The new Sonic prototype design and colors will bring a vibrant look to the Bennett Crossing commercial area. Staff believes the proposed design, materials and colors are of high quality and compatible with future development in the area. Rooftop mechanical equipment will be screened.
 - ii. The trash enclosure is to be constructed with similar and compatible materials used on the main building.

2. Parking Standards

The Town's Municipal Code includes off-street parking requirements for a variety of uses, including restaurants. The proposed number of parking spaces meets the Town's minimum parking requirement.

3. Landscape Standards

Staff supports the landscape plan as proposed.

4. Lighting Standards

The proposed lighting plan conforms with shielding, cutoff, illumination and height provisions of the Municipal Code.

5. Sign Regulations

All signs, including wall signs, monument signs and pole signs, are subject to the sign regulations in the Bennett Municipal Code, Chapter 16, and Article III. Final dimensions and colors will be determined at the time of sign permit.

Conformance with the Town's Development Design Guidelines

The proposed site plan, building character and design, and landscape character meet the objectives of the Town's Development Design Guidelines relative to:

- Building location
- Parking
- Service areas
- Pedestrian access & circulation
- Enclosures & screening
- Fencing
- Site Lighting
- Building orientation, mass and character
- Landscape character and design

APPLICANT PRESENTATION:

Dora Simons, Direction of Operations for Rubyhill Denver, LLC, the developer. She has been the director of operation for 23+ years. They are very excited to have a location in Bennett. Typically, the hours of operation are from 6:00 a.m. until 9:00 or 10:00 p.m. during the winter months. Summer hours are typically 6:00 a.m. until midnight. Construction period is typically 120 days and they hope to start in late winter of 2022 or early spring of 2022. The volume of traffic is yet to be determined since this is the first Sonic Drive-In that will be located so close to an interstate. Sonic Drive-In is a franchise business. The Sonic-Drive In construction model will be the smallest footprint of the business.

PUBLIC COMMENTS

There were no public comments presented.

The public hearing was closed at 7:52 p.m.

MAYOR PRO TEM HARRELL MOVED, TRUSTEE SUS SECONDED to approve Resolution No. 897-21 – A resolution approving the Bennett Sonic Drive-In Final Development Plan subject to the following conditions:

1. The applicant shall confer with the Bennett-Watkins Fire Protection District and ensure the proposed development conforms to the adopted fire code standards and design expectations of both Town of Bennett and the fire district.
2. Before recording the final development plan, the applicant shall make minor Modifications directed by Town Staff, the Town Attorney and the Town Engineer.

The voting was as follows:

YES: Barden, Harrell, Oakley, Pindell, Sus, Vittum

NO: None

EXCUSED: Smith

Mayor Royce D. Pindell declared the motion passed unanimously.

3. **Town of Bennett Development Impact Fees**

Ordinance No. 733-21 – An ordinance amending the development impact fees for the Town of Bennett

Danette Ruvalcaba, Finance and Technology Director, reported to the Trustees, the ordinance before them is to codify the increase in the Town’s development impact fee schedule regarding the transportation, stormwater and public facilities impact fees (a 6% increase). The Trustees approved the fee schedule during tonight’s budget public hearing.

Transportation Impact Fee: \$1,015.00 per Single Family Equivalent (SFE)
Stormwater Impact Fee: \$1,053.00 per SFE
Public Facilities Impact Fee: \$3,153.00 per SFE

TRUSTEE SUS MOVED, TRUSTEE OAKLEY SECONDED to approve Ordinance No. 733-21 – An ordinance amending the development impact fees for the Town of Bennett. The voting was as follows:

YES: Harrell, Oakley, Pindell, Sus, Vittum, Barden

NO: None

EXCUSED: Smith

Mayor Royce D. Pindell declared the motion passed unanimously.

4. **Request for Proposal (RFP) 21-014 – Phase 1 Recycled Water Pipeline – Segment 1**

Robin Price, Director of Public Works, reported to the Trustees, in 2019 the Town of Bennett Received an Adams County Open Space Grant to implement a reclaimed water system and Deliver reclaimed water for irrigation use at key Town parks.

During the May 25, 2021 board meeting, Town Staff presented and received approval to award a contract to MSK Consulting for the design of the Reclaimed Water Pump, Treatment Station and Transmission Pipeline Project. Since that time, MSK Consulting has been working diligently on the design of the pipeline as well as the pump station.

During the September 14, 2021 board meeting, Staff presented and received approval to purchase 6,000 linear feet of 12-inch C900 DR18 purple pipe.

On November 10, 2021, Staff posted RFP 21-14 – Phase 1 Recycled Water Pipeline – Segment 1. Bids were due on Wednesday, December 1, 2021, at 2:00 p.m. The project includes installation of approximately 3,595 feet of owner-furnished 12-in C900 DR18 PVC pipe for the recycled water distribution system, including appurtenances.

Bid’s which were received are from the following:

- Dan’s Custom Construction \$299,847.00
- Fiore & Sons, Inc. \$381,704.27
- Vortex Services \$448,754.00
- Global Underground Corp. \$481,671.00

Town Staff, MSK Consulting, LLC and W2 Engineers reviewed the bid summaries. Dan's Custom Construction provided a responsive bid and is a qualified contract with experience installing pipeline in Colorado. They have also completed several project with the Town of Bennett.

TRUSTEE VITTUM MOVED, MAYOR PRO TEM HARRELL SECONDED to authorize the Mayor and the Town of Bennett to enter into a standard Town contract with Dan's Custom Construction, Inc. in an amount not to exceed \$299,847.00 for the Phase 1 Recycled Water Pipeline – Segment 1 construction project. The voting was as follows:

YES: Oakley, Pindell, Sus, Vittum, Barden, Harrell

NO: None

EXCUSED: Smith

Mayor Royce D. Pindell declared the motion passed unanimously.

6. TOWN ADMINISTRATOR REPORT

Trish Stiles, Town Administrator, reported on the following:

- Staff discovered a utility bill bulk rate error on or around October 20, 2021 when updating utility billing rates in February 2020. After researching the error, it was discovered the Bulk water rate was changed from \$13.69 to \$14.00, instead of the adopted rate in the 2020 fee schedule of \$19.00, the same rate was adopted however, the \$14.00 rate continued to be charged through October 2021. Steps which have been taken to correct the error are:
 - An audit was conducted of all bulk water accounts from February 2020 – October 2021
 - Corrective bills were calculated for the discrepancy
 - Finance sent out a letter explaining the rate error has occurred
 - Corrective bills were included to request payment for the additional monies due.

Moving forward internal controls have been implemented to ensure that a similar error does not occur.

- The second part of the Staff retreat is taking place on December 15. There will be Staff at Town Hall to assist residents.
- Holiday Help was a success; 17 sponsored families, and over 65 cars drove through during the toy distribution. \$7,200 in cash donations were received and approximately \$2,000 in toy donations. Thanks to Commander Karl Smalley for volunteering and Steve King for assisting with the organization of the event.
- Thanked Staff for all their hard work in 2021.
- Will be on vacation the week of December 27. Ms. Summers will be available.
- The holiday party is December 17 from 6:00 p.m. – 9:00 p.m.
- The consultant's lunch is on December 16.

7. TRUSTEE COMMENTS AND COMMITTEE REPORTS

Whitney Oakley

Trustee Oakley reported on the following:

- Attended the Business Advisory Meeting. Several comments presented on the Town's Master Plan. Feedback was made regarding affordable housing.

Darvin Harrell

Mayor Pro Tem Harrell reported on the following:

- Asked about the status of the Comfort Inn opening. Ms. Stiles responded possibly March 2022.
- Asked about the status of the North Municipal Complex opening; Ms. Stiles responded possibly May 2022.
- What is the status of the QuikTrip opening; Mr. Hebert replied May 2022.

Royce D. Pindell

Mayor Royce D. Pindell reported on the following:

- Thanked all who assisted with Breakfast with Santa. Approximately 650 meals were served. Approximately \$117.00 in donations were received.
- The mask mandate is back in effect.
- Trustee Sus assisted as Santa’s helper.
- Thanked Staff for great work in 2021.

Mayor Royce D. Pindell called for a recess at 8:40 p.m. The meeting resumed at 8:50 p.m.

8. EXECUTIVE SESSION

For the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators under C.R.S. 24-6-402(4)(e); Bennett School District 29J Intergovernmental Agreement (IGA)

TRUSTEE OAKLEY MOVED, TRUSTEE VITTUM SECONDED to go into executive session for; determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators under C.R.S. 24-6-402(4)(e); Bennett School District 29J Intergovernmental Agreement (IGA). Voting was as follows:

- YES: Pindell, Sus, Vittum, Barden, Harrell, Oakley
- NO: None
- EXCUSED: Smith

Mayor Royce D. Pindell declared the motion carried by unanimous vote.

The Board went into executive session at 8:55 p.m.

The Board came out of executive session at 9:37 p.m. The Mayor announced that the Board has been in executive and the following person participated via hybrid in that session: Mayor Royce D. Pindell, Trish Stiles, Trustee Vittum, Trustee Oakley, Trustee Sus, Melinda Culley, Trustee Barden, Mayor Pro Tem Harrell, Steve Hebert, Adam Meis, and Christina Hart. The Mayor asked if there were any matters not included in the motion for an executive session or violations of the Open Meetings Law, and if so, that these concern be stated for the record. No concerns were presented.

9. REPORT FROM EXECUTIVE SESSION

During the executive session, the Board discussed negotiations and instructed negotiators with respect to the Bennett School District 29J IGA.

10. ADJOURNMENT

TRUSTEE VITTUM MOVED, MAYOR PRO TEM HARRELL SECONDED to adjourn the meeting. The meeting was adjourned at 9:41 p.m. Voting was as follows:

YES: Sus, Vittum, Barden, Harrell, Oakley, Pindell

NO: None

EXCUSED: Smith

Mayor Royce D. Pindell declared the motion carried by unanimous vote.

Royce D. Pindell, Mayor

Christina Hart, Town Clerk

STAFF REPORT



welcome neighbors.

TO: Mayor and Town of Bennett Board of Trustees
FROM: Melinda Culley, Town Attorney
DATE: January 22, 2022
SUBJECT: Intergovernmental Agreement Concerning Land Dedications or Payments in Lieu for School Purposes

Background

The Town and Bennett School District 29J have been working for several months on an Intergovernmental Agreement (IGA) concerning the requirements for land dedication or conveyance for public school sites or payments in lieu of land dedication or conveyance (“fair contributions for public school sites”). Significant parts of the IGA include:

The methodology for determining the fair contribution for public school sites has been updated to require per dwelling unit (DU):

- Single Family Detached – 0.0162 acres or \$2,079.09
- Single Family Attached – 0.0075 acres or \$964.84
- Multi-family – 0.0038 acres or \$482.42

In deciding whether land or payment in lieu of land will be required, the School District will consult the School Site Zone map, school acreage requirements and the Town’s comp plan.

If land is to be dedicated, the developer is responsible for providing a site that has direct access to an improved street, utilities stubbed to the site, and overlot grading.

If a fee-in-lieu is required, the fees will be collected at the time of building permit for no fewer than 50 units at a time.

The School District will deposit all such funds into an interest-bearing account. Monies must be used for the acquisition, development or expansion of school sites or for capital facilities planning, site acquisition or capital outlay purposes for school facilities.

The School District will submit an annual report and audit to the Town describing how the in-lieu payments were spent.

The initial term of the IGA is ten years and can be renewed for an additional 10 years. Either party may terminate the IGA after giving one year notice.

The parties agree to cooperate in the defense of any legal action contesting the validity of the IGA. The School District agrees to defend such claims.

If the Board chooses to approve the IGA, it will need to also adopt an ordinance that implements the terms of the IGA. Adoption of that ordinance requires public hearings before the Planning Commission and Town Board. The Board’s hearing on the ordinance is currently scheduled for January 25.

Staff Recommendation

Staff recommends the approval of Resolution 898-22, a resolution approving an Intergovernmental Agreement between the Town of Bennett and Bennett School District 29J concerning land dedications or payments in lieu for school purposes.

Attachments

1. Intergovernmental Agreement
2. Resolution 898-22

INTERGOVERNMENTAL AGREEMENT CONCERNING LAND DEDICATIONS OR PAYMENTS IN LIEU FOR SCHOOL PURPOSES

THIS INTERGOVERNMENTAL AGREEMENT CONCERNING LAND DEDICATIONS OR PAYMENTS IN LIEU FOR SCHOOL PURPOSES (“Agreement”) is entered into by and between the Town of Bennett, a municipal corporation (“Town”), and Bennett School District No. 29-J, a political subdivision of the State of Colorado (“School District”), to be effective as of the ____ day of _____, 2021 (“Effective Date”).

RECITALS

A. Local governments are encouraged and authorized to cooperate or contract with other units of government, pursuant to C.R.S. § 29-20-105, for the purpose of planning or regulating the development of land within both jurisdictions, including, but not limited to, the joint exercise of planning, zoning, subdivision, building and related regulations.

B. Pursuant to sections 31-23-301 and -303, C.R.S., the Town is furthermore authorized to regulate and restrict the density of population of the Town for the purpose of promoting health, safety, morals, and general welfare of the community; and to adopt regulations in accordance with the comprehensive plan to facilitate the adequate provision of schools.

C. Growth in residential land development necessitates the building of additional public school facilities and making improvements to existing school facilities in order to accommodate the corresponding increases in the student population. The dedication and conveyance of land for public school sites or payments in lieu thereof (hereinafter referred to as “in-lieu payments”) (land dedication or in-lieu payments are sometimes hereinafter collectively referred to as “Fair Contribution for Public School Sites”) will help to meet such demand.

D. In order to provide adequate public school facilities to serve new residential land developments, it is appropriate that the School District and Town cooperate in the negotiation process between the Town and developers seeking annexation or subdivision of land that is annexed or developed after the Effective Date regarding Fair Contribution for Public School Sites.

E. Requiring Fair Contribution for Public School Sites implements the Town’s goals and policies to provide for public improvements in a manner appropriate for a modern, efficiently functioning Town, and to ensure that new development does not negatively impact the provision of municipal services.

F. There is an essential nexus between the need for the Fair Contribution for Public School Sites and the legitimate local governmental interest of promoting and preserving the public health, safety, and welfare of the citizens of the Town and the School District.

G. It is a reasonable exercise of the power of the Town to require Fair Contribution for Public School Sites so that new residential developments bear a proportionate share of the cost of

public school site acquisitions that are necessary to provide educational opportunities for the estimated new students generated by new residential developments.

H. The Town and School District, upon consideration of the effect of residential land development on the ability of the School District to provide public school facilities in the Town, agree that it is in the best interests of the citizens of the Town to enter into an intergovernmental agreement for the purposes of providing for the Fair Contribution for Public School Sites, as provided for in this Agreement.

I. The Town and School District desire to hereby define the rights and obligations of each entity with respect to the planning, collection, and use of Fair Contribution for Public School Sites.

AGREEMENT

NOW THEREFORE, in consideration of the objectives and policies expressed in the Recitals to this Agreement and the mutual promises contained in this Agreement, the Town and School District agree as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined have the meanings specified below:

"Developer" means the person or entity seeking land-use approval from the Town and the party responsible for land dedication or in-lieu payments hereunder.

"Dwelling Unit" means a housekeeping unit designed and used for occupancy by a single individual or a family, containing cooking, living, sleeping, and sanitary facilities and having a separate entrance. For purpose of this Agreement, Dwelling Units are categorized as Single Family Detached, Single Family Attached; and Multi-family.

"Land Development Project" or "Project" means any proposed annexation, subdivision approval or any subsequent amendment to a previously approved development proposal that will result in new or additional Dwelling Units or a population density or population greater than that contemplated by the previously approved development proposal.

"Methodology" means the formulas, based upon the School Planning Standards, for calculating the Fair Contribution for Public School Sites, as set forth in Exhibit A.

"Multi-family" means:

1. Buildings that contain three or more Dwelling Units that:
 - a. Are accessed by from interior elevators or hallways, or from individual exterior entrances; and

b. Are separated by interior walls and/or floors.

2. Multi-family does not include boarding houses, dormitories, fraternities, sororities, bed and breakfast establishments, Single Family Attached, or hotels and motels.

“School Facility” means any building, structure or appurtenant facility, whether combined in a single structure or separate structures, that is required in the judgment of the School District Board of Education for the provision of K-12 educational services within the School District, including, without limitation, any classroom building, administrative office building, transportation center, athletic field and/or structure, stadium, indoor pool, maintenance building, teacherage and other employee housing and/or training facility.

“School Planning Standards” means the adopted School District planning standards set forth in Exhibit A, which establish school facility enrollment capacities, School Site Acreage Requirements, student yields per category of Dwelling Unit for each of the three school levels (elementary, middle and secondary or high), and the estimated fair market value of real property that is located within the boundaries of both the Town and the School District.

“School Site” means a tract or parcel of land dedicated by express language in the final plat of a Project for the construction or expansion of School Facilities.

“School Site Acreage Requirements” means the minimum acreage needed for each School Site for each of the three separate school levels. The School Site Acreage Requirements are set forth in Exhibit A attached hereto and incorporated herein by reference.

“School Site Zone Map” means a conceptual planning document adopted by the School District that identifies general locations of existing and proposed School Sites and School Facilities within the boundaries of the School District and the Town or neighboring jurisdictions.

“Single Family Attached” means:

1. Two or more Dwelling Units that are designed so that individual units have individual ground-floor access and are separated from each other by unperced common walls from foundation to roof (e.g., side-by-side duplexes and all types of townhomes); or
2. Two Dwelling Units that are designed so that individual units:
 - a. May or may not have individual exterior doors, but provide no direct access between the first floor and second floor unit (access may be through a common interior foyer that provides access to both units or through separate exterior doors); and
 - b. Are separated from each other by a floor (e.g., over-under duplexes).

“Single Family Detached” means Dwelling Units that are:

1. Located in individual buildings;
2. Separated from each other by outside walls; and
3. Intended for the use of a single housekeeping unit.

“Town Code” means the Town of Bennett Municipal Code, as amended.

2. School Site Coordination and Development Referrals

A. The Town shall refer to the School District all Land Development Project petitions or applications that require a public hearing before the Planning Commission and/or the Board of Trustees for the School District’s review and comment concerning the adequacy of School Sites and School Facilities to provide adequate educational opportunities for students in response to the Land Development Project. The School District shall make the determination, as further specified hereinbelow in Paragraph 4, concerning the effect a Land Development Project will have on the School District’s ability to provide adequate School Sites and School Facilities based on the Methodology in effect at the time the Developer’s proposal is submitted by the Town to the School District for its review and, to the extent permitted by law, the Town shall implement said determination consistent with this Agreement and the Town Code and regulations then in effect. Town staff shall endeavor to invite School District representatives to its Design Review Committee meetings when Developers are proposing residential development with specific densities and types of units.

B. If a non-residential Land Development Project application is filed with the Town but that, in the opinion of the Town, may influence or affect property owned by or activities of the School District, the Town shall also refer information pertaining to said application to the School District for review and comment in accordance with the procedures contemplated herein.

C. The School District agrees to promptly review the referred Land Development Project petition or application and promptly submit its comments, recommendations, and requests to the Town by the deadline stated in any cover letter or referral letter accompanying the petition or application from the Town to the School District. Failure to timely respond may be deemed by the Town as a response from the School District of “no comment” concerning the referred petition or application.

D. The parties acknowledge the School District is currently preparing a School Site Zone Map, which is intended to provide information on the general locations of future school sites and shall assist the School District in determining whether the Fair Contribution for Public School Sites should be in the form of land dedication or in-lieu payments. At the time of execution hereof, the School District shall submit the proposed School Site Zone Map to the Town and shall consider any issue(s) raised by the Town prior to final adoption of the map. The School Site Zone Map shall be reviewed by the School District no less than every four (4) years,

and the School District agrees to submit proposed revisions to the School Site Zone Map to the Town and shall consider any issue(s) raised by the Town prior to final adoption of the revisions.

E. The School District agrees to locate future School Sites in conformity with the then current School Site Zone Map and the comprehensive plan of the Town, insofar as is feasible. The School District shall consult with the Town on a site specific, case-by-case basis as needed in the School District's sole discretion and shall advise the Town in writing in advance of acquiring any land in the Town for a School Site or commencing construction of any improvements on a School Site located in the Town. The School District shall submit to the Town an advisory site plan detailing the proposed construction of any School Facility and shall consider any issue(s) raised by the Town.

3. Methodology

A. The Town agrees to require Fair Contribution for Public School Site as a precondition to final approval of the lawfully authorized Dwelling Units not otherwise exempted under Paragraph 6 below or the Town Code as proposed in the Land Development Project.

B. For purposes of this Agreement, the parties have adopted the Methodology to determine Fair Contribution for Public School Sites for each of the three categories of Dwelling Units (Single Family Detached, Single Family Attached, and Multi-family) sufficient to provide adequate educational opportunities to new residential developments. The parties agree that the Methodology, attached and incorporated herein as Exhibit A, and as amended from time to time as provided in this Agreement, has been developed in a manner so as to fairly apportion the cost of acquiring School Sites made necessary by a Land Development Project and to ensure that any in-lieu payments will be used as provided in Section 5 below.

C. Unless and until modified by the parties, the Methodology and its supplementary background materials shall include, but not be limited to, the following factors:

- (1) School Planning Standards adopted by the School District;
- (2) The capacity demand of each category of School Facility resulting from each category of Dwelling Unit;
- (3) The means for determining the per-acre fair market value of real property that is located within the boundaries of both the Town and the School District; and
- (4) The procedure for calculating the Fair Contribution for Public School Site sufficient to provide educational opportunities for students in response to the proposed Land Development Project or the combination of land dedication and conveyance and in-lieu payments, required per Dwelling Unit.

D. The Town and School District agree that the Methodology and School Planning Standards shall be reviewed every four (4) years or earlier upon the request of either party due to a change in the standards and conditions within the School District. The Methodology and School Planning Standards may be revised by the mutual consent of the Town and the School District to reflect the current standards and conditions within the School District. The Town shall hold a public hearing before revising the Methodology. The exhibit adopted pursuant to the provisions of this Agreement shall be updated at such time to reflect changes agreed upon by the parties. The School District shall furnish a copy of any updated School Planning Standards it develops to the Town prior to adoption by the School District.

E. It is the intent of the parties that the Methodology and any amendment thereto, and application of the Methodology, shall be in conformity with the requirements of Section 29-20-203, C.R.S.

4. Determination of Land Dedication or In-Lieu Payment Requirements

A. As a condition of approval of any Land Development Project, the Developer's Land Development Project application or petition shall dedicate and provide for the conveyance of land for a School Site to the School District or, in the event the proposed dedication of land is inconsistent with the provisions of the School Site Zone Map, the Town's comprehensive plan or the School Site Acreage Requirements as determined by the Superintendent or designee or that the parties agree is not otherwise in the best interests of the School District, the School District may require a payment in lieu of land dedication or a combination of land dedication and an in-lieu payment.

B. The manner and amount of either type of land dedication or in-lieu payment thereof shall be based on the application of the School Planning Standards and Methodology in effect at the time the Developer applies for any Land Development Project. Nothing provided herein shall preclude the School District and any Developer from mutually agreeing to resolve the issue of Fair Contribution for Public School Sites in a manner other than as stated above.

C. If land is to be dedicated to the School District as part of the approval of any Land Development Project, the Town agrees before recording of the final plat for the Land Development Project, or any portion of it, to require proof that the dedication and conveyance or appropriate reservation of land for future dedication to the School District in accordance with Paragraph 4(E), has been made to the School District in accordance with the following requirements:

(1) The Developer has conveyed or agreed to convey to the School District by general warranty deed, title to the land slated for dedication, which title is to be free and clear of all items, encumbrances, and exceptions (except those approved in writing by the School District), including, without limitation, real property taxes, which will be prorated to the date of conveyance or dedication provided, however, if the Developer holds title to the land to be conveyed as a school site by special warranty deed, then conveyance to the

School District shall be by special warranty deed. Dedication and conveyance shall occur no later than, or contemporaneously with, the recording of the final plat for the subdivision. If requested by the School District, the Developer shall also enter into a contract with the School District for the sale of real property, which contract shall require the Developer to provide title insurance for the property; a land survey plat of the property; representations and warranties concerning hazardous materials on the property; and contain any other terms agreed upon between the School District and the Developer dedicating and conveying the property.

(2) At the time of dedication or conveyance, the Developer shall provide a title insurance commitment and policy in an amount equal to the fair market value of the dedicated property.

(3) At the appropriate time, not later than issuance of the first residential building permit for the Land Development Project, the Developer shall either provide or pay the costs associated with ensuring that the School Site has direct access to a publicly dedicated street improved to Town standards, utilities (including water, sewer, storm sewer, electric, natural gas and telecommunications) stubbed to the School Site, and overlot grading of the School Site, which shall include mass grading but not final/fine grading; all of which costs have been considered and included in the determination of the Developed Land Value in accordance with Exhibit A for those Developers who make in-lieu payments.

(4) The School District shall at no expense to the Town maintain all lands dedicated to the School District, including without limitation mowing in conformance with Town ordinances and regulations. Notwithstanding the foregoing, the School District and the Town may by separate joint use agreement mutually agree to allow for the development and use of the dedication land for park or recreational uses by the Town until commencement of construction of improvements on said land.

D. If land is to be reserved for future dedication to the School District as part of the approval of any Land Development Project, the Town shall thereafter accept the final plat for the Land Development Project, or any portion of it, for recording only if such plat shows the reservation of such land for such future dedication to the School District. Dedication of the reserved site shall occur no later than the date of final approval of the Land Development Project that includes the reserved site. The School District shall promptly certify to the Town in writing that the dedication has been made. In the event a final plat is approved without dedication of land, any future filings within the Project may be withheld until the dedication is complete. In the event that the School District determines, in its sole discretion, that the dedication of a reserved site is necessary prior to the issuance of any building permit for the Project within which such site is located, the School District shall so notify the person(s) shown by the records of the Adams or Arapahoe County Assessor as being the then-current owner(s) of such site. Said notice shall be sent by certified mail, return receipt requested. Within sixty (60) days of the mailing of said notice, the reserved property that is the subject of the mailing shall be dedicated to the

School District by the owner(s) thereof, as a condition of the Town's final approval of the Land Development Project.

E. Nothing contained in this Agreement shall preclude the School District from commenting to the Town upon the adequacy of School Sites or School Facilities, necessary in its judgment, to serve the Land Development Project.

5. Collection, Deposit and Expenditure of In-Lieu Payments

A. If the Fair Contribution for Public School Sites includes payment in lieu of dedication of land, then at the time of application for a building permit, the Developer shall make in-lieu payments to the School District calculated in accordance with the then current Methodology for each Dwelling Unit subject to the pending building permit application but no fewer than the required in-lieu payment amount for fifty (50) Dwelling Units. If the Land Development Project includes fewer than fifty (50) Dwelling Units, then the full in-lieu payment for all Dwelling Units in the Project shall be paid at the time of the first building permit. It is contemplated that the Developer's last in-lieu payment for the total Land Development Project approved by the Town may include fewer than fifty (50) Dwelling Units, in which case, Developer's final in-lieu payment will be the required in-lieu payment amount for the remaining Dwelling Units subject to the Land Development Project. If future adjustments or modifications to the Project result in a reduction in the number of Dwelling Units as proposed in the Land Development Project, then the School District shall have no obligation to, except as otherwise provided herein, refund in-lieu payments previously paid by the Developer. Before issuing a building permit for any Dwelling Unit not otherwise exempt pursuant to Paragraph 6, the Town shall require evidence that the Fair Contribution for Public School Sites has been received by the School District. The Superintendent of the School District, or the Superintendent's designee, shall provide such evidence in a timely manner to the Town Manager or the Town Manager's designee. In the event a building permit is inadvertently issued without the payment of any in-lieu fees, any future building permits for Dwelling Units within the Project or future filings of the Developer within the Project may be withheld until the delinquent fee is paid. All in-lieu payments shall be paid to the order of the School District and promptly deposited into an appropriate interest-bearing account authorized by Colorado Revised Statutes sections 24-75-601 to 605, which account is established, held and owned by the School District. Fair Contributions for Public School Sites shall not constitute revenue of the Town under the provisions of Article X, Section 20 of the Colorado Constitution.

B. The in-lieu payments deposited into the account and all funds the School District may receive from the sale of land dedicated or conveyed as a School Site shall be earmarked and expended solely for acquisition, development, or expansion of School Sites or for capital facilities planning, site acquisition, or capital outlay purposes for School Facilities within the senior high school feeder attendance area boundaries that include the property for which the contribution was paid. Subject to the limitations of this Agreement, the time for, nature, method, and extent of such planning, acquisition, development, or outlay shall be at the discretion of the School District.

C. Except as otherwise provided in this IGA, any in-lieu payments the District has not used for acquisition or development of public school sites within twenty (20) years of the date of the Developer's final in-lieu payment for the Land Development Project shall be tendered for refund, with interest earned and credited according to C.R.S. § 29-1-801 to -803, to the person or entity who made the Fair Contribution for Public School Sites. This does not pertain to the dedication of land. The School District shall give notice by first-class mail to the person who made the Fair Contribution for Public School Sites at their address as reflected in the records maintained by the School District. If the person does not file with the School District a written claim for refund of the funds within ninety (90) days of the mailing of such notice, the Fair Contribution for Public School Sites refund shall be forfeited and revert to the School District to be utilized for capital facilities that will benefit the senior high school feeder attendance area boundaries that include the property for which the Fair Contribution for Public School Sites funds were paid. The School District may request the Town extend the 20-year time period. The Town shall consider any such request at a public hearing, following which the Town may, for good cause shown, extend such period of time as the Town deems reasonable and necessary in accordance with the School Site Zone Map and the Town's comprehensive plan.

6. Exemptions from Fair Contribution for Public School Sites

A. The following uses within the Town's boundaries shall be exempted from requirements of Fair Contribution for Public School Sites:

- (1) Construction of any non-residential building or structure, except as otherwise provided herein;
- (2) Alteration, replacement, or expansion of any legally existing building or structure which does not increase the number of Dwelling Units;
- (3) Construction of any building or structure for limited term stay or for long-term assisted living, including, but not limited to, bed and breakfast establishments, adult boarding or rooming houses, family-care homes, group-care homes, halfway houses, hotels, motels, nursing homes, or hospices; and
- (4) Construction of any residential developments that are subject to recorded covenants acceptable to the Town in consultation with the School District restricting the age of the residents of said Dwelling Units such that said Dwelling Units may be classified as "housing for older persons," pursuant to the Federal Fair Housing Amendments Act of 1988, as amended.

B. Any claim of exemption as provided in this Section 6 must be made no later than the time of application for the Project. Any claim not so made may be deemed waived by the Developer.

7. Annual Report, Accounting and Audit

A. The School District shall submit an annual report on or before September 1 of each year to the Town describing the School District's collection and use of in-lieu payments during the preceding fiscal year. This report shall include:

(1) A review of the assumptions and data upon which the Methodology is based, including student generation ratios and attendance area boundaries;

(2) Statutory changes or changes in the Methodology, including the School Planning Standards, and School District policies related to acquisition or construction of school sites and facilities; and

(3) Any recommended modifications to the land dedication and in-lieu payment schedule.

B. After receipt of the report, the Town shall review it, consider those matters listed in the previous subsection, and shall complete its review within sixty (60) days of receipt.

C. The School District shall establish and maintain a separate accounting system to ensure that all in-lieu payments are expended in accordance with the Agreement.

D. The School District shall cause an audit to be performed annually of the in-lieu payments received, used, or expended under this Agreement. The audit shall be conducted according to the generally accepted accounting principles for government entities. A copy of said audit shall be furnished to the Town. The cost of the audit shall be paid for by the School District.

E. At any time the Town deems necessary, the School District shall honor the Town's request for an accounting to be completed by the chief financial officer of the School District concerning the School District's use of the in-lieu payments.

8. Term of Agreement

The term of this Agreement shall commence on the Effective Date and shall continue for a period of ten (10) years thereafter. This Agreement shall automatically renew for additional ten (10) year terms unless either party notifies the other of intent to non-renew at least one hundred eighty (180) days prior to expiration of the term or any extensions thereof. Either party may terminate this Intergovernmental Agreement at any time with or without cause, upon one year's written notice to the other party. At least sixty (60) days before submitting notice of termination to the other party, a party desiring to terminate shall meet and confer in good faith with the other party about its reasons for termination. Any termination or repeal of any authorizing ordinance will apply prospectively to any proposed Land Development Projects and shall not affect the performance of any Projects approved when this Agreement was in effect.

9. Miscellaneous Provisions

A. **Faith and Credit.** Neither party shall extend the faith or credit of the other to any third person or entity.

B. **Amendments.** This Agreement may be amended only by mutual agreement of the parties and shall be evidenced by a written instrument authorized and executed with the same formality as this Agreement.

C. **Notice.** Any notice required by this Agreement shall be in writing. If such notice is hand delivered or personally served, it shall be effective immediately upon such delivery or service. If given by mail, it shall be certified with return receipt requested and addressed to the following addresses:

Town of Bennett
Town Administrator
207 Muegge Way
Bennett, CO 80102

Bennett School District No. 29-J
Attention: Superintendent
615 7th Street
Bennett, CO 80102

D. **Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be interpreted and construed in accordance with the laws of the State of Colorado.

E. **Severability.** If this Agreement, or any portion of it, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of the agreement.

F. **Indemnification.** The Town and School District agree to cooperate in the defense of any legal action that may be brought contesting the validity of this Agreement or the implementing ordinances. The School District shall be responsible for defending any such claim, whether filed against the Town, the School District, or both. The School District shall assume responsibility for payment of reasonable attorney fees. Upon receipt by the Town of any claim, or commencement of a civil action against the Town, the Town shall give prompt written notice thereof following which the parties agree to consult with each other regarding the claim and/or defense of the action and selection of counsel in connection therewith. Nothing contained in this Agreement shall constitute a waiver by the Town or the School District of the provisions of the Colorado Governmental Immunity Act or other applicable immunity defense. This provision shall

survive termination of the Agreement, and be enforceable until statutes of limitation preclude all claims.

G. **Provisions Construed as to Fair Meaning.** The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any party based upon any attributes to such party as the source of the language in question.

H. **Compliance with Ordinances and Regulations.** This Agreement shall be administered consistent with all current and future Town laws, rules, ordinances, and regulations concerning land dedication or conveyance for public school sites.

I. **No Implied Representations.** No representations, warranties, or certifications, express or implied, shall exist as between the parties, except as specifically stated in this Agreement.

J. **No Third-Party Beneficiaries.** None of the terms, conditions, or covenants in this Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than the Town or School District receiving services or benefits under this Agreement shall be only an incidental beneficiary.

K. **Financial Obligations.** This Agreement shall not be deemed a pledge of the credit of the Town or the School District or a collection or payment guarantee by the Town to the School District. Nothing in this Agreement shall be construed to create a multiple fiscal year direct or indirect municipal debt or municipal financial obligation.

L. **Integrated Agreement and Amendments.** This Agreement is an integration of the entire understanding of the parties with respect to the matters stated herein. The parties shall only amend this Agreement in writing with the proper official signatures attached hereto.

M. **Waiver.** No waiver of any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default.

N. **Ordinance.** This Agreement has been approved by the Town as part of and in conjunction with an ordinance establishing the requisite standards and requirements of the Town for future annexation and subdivision of land annexed after the Effective Date hereof.

O. **Prospective Application.** This Agreement shall apply prospectively to any proposed Land Development Projects approved by the Town on or after the Effective Date of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall be in full force and effect the day and year first above set forth.

TOWN OF BENNETT, COLORADO

By: _____
Royce Pindell, Mayor

Date: _____

ATTEST:

Christina Hart, Town Clerk

BENNETT SCHOOL DISTRICT 29-J

By: _____
President, Board of Education

Date: _____

ATTEST:

Secretary

EXHIBIT A
METHODOLOGY

I. Student Yield, Land Dedication and Fee-in-Lieu Calculator

Student Yield Calculator			Elementary		Middle		High		Total
Housing Unit Type	Dwelling Units	Generation Rate	Students	Generation Rate	Students	Generation Rate	Students	Generation Rate	Students
Single Family Detached	X	0.29	0	0.15	X	0.16	0	0.6	X
Single Family Attached	X	0.14	0	0.06	X	0.08	0	0.28	X
Multi-family	X	0.07	0	0.03	X	0.04	0	0.14	X
Totals									X

Acreage Calculator	Units	Acreage Multiplier	Acreage Owed		Fee Multiplier	Fee Owed
Single Family Detached Units (SFD)	0	0.0162	0		\$2,079.09	0
Single Family Attached Units (SFA)	0	0.0075	0		\$964.84	0
Multi-family Units (MF)	0	0.0038	0		\$482.42	0
Totals			0		Or	0

II. School Site Acreage Requirements

Elementary School	10 acres
Middle School	25 acres
High School	48 acres

4872-5334-9638, v. 1

RESOLUTION NO. 898-22

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT CONCERNING LAND DEDICATIONS OR PAYMENTS IN LIEU FOR SCHOOL PURPOSES

WHEREAS, the Town of Bennett and the Bennett School District 29J have cooperated in the preparation of an Intergovernmental Agreement Concerning Land Dedications or Payments In Lieu for School Purposes (the “IGA”); and

WHEREAS, the Board of Trustees finds that the proposed IGA is in the best interests of the Town and that it should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF BENNETT, COLORADO:

Section 1. The Board of Trustees hereby authorizes the execution of the Intergovernmental Agreement Concerning Land Dedications or Payments In Lieu for School Purposes (the “IGA”), in essentially the same form as the copy of such IGA accompanying this Resolution.

Section 2. The Mayor is authorized to execute such IGA on behalf of the Town, except that the Mayor is hereby further authorized to negotiate and approve such revisions to said IGA as the Mayor and Town Administrator determine are necessary or desirable for the protection of the Town, so long as the essential terms and conditions of the IGA are not altered.

INTRODUCED, READ, AND ADOPTED THIS 11th DAY OF JANUARY, 2022.

TOWN OF BENNETT

Royce D. Pindell, Mayor

ATTEST:

Christina Hart, Town Clerk

Suggested Motion

I move to approve Resolution No. 898-22 - A resolution approving an Intergovernmental Agreement concerning land dedications or payments in lieu for school purposes.

STAFF REPORT



welcome neighbors.

TO: Mayor and Town of Bennett Board of Trustees
FROM: Christina Hart, Town Clerk
DATE: January 11, 2022
SUBJECT: Town of Bennett Planning and Zoning Commission Appointments

Background

The Board of Trustees shall, in January of each year, appoint members to the Town of Bennett Planning and Zoning Commission to staggered three-year terms.

The terms of three Commissioners expired on December 31, 2021. Commissioner(s) Wayne Clark, James Grider Lee and Scott Smith have all indicated their willingness to accept the appointment and continue to serve the community.

Staff Recommendation

Staff recommends the Board of Trustees reappoint James Grider Lee, Wayne Clark and Scott Smith to the Town of Bennett Planning and Zoning Commission with a term ending on December 31, 2025.

Attachments

1. James Grider Lee Application
2. Wayne Clark Application
3. Scott Smith Application
4. Oath of Office

Town of Bennett Planning Commission Appointment Application

Thank you for your interest in serving on the Town of Bennett Planning Commission.

In the Town of Bennett, the Commission consists of seven (7) members. The Planning Commission serves as an advisory body to the Board of Trustees. The commission reviews annexations, rezonings, subdivisions, planned unit developments and a long-range comprehensive plan. Roles and responsibilities are outlined in Chapter 16 of the Bennett Municipal Code.

https://library.municode.com/co/bennett/codes/municipal_code

The Commission generally meets on the 3rd Monday of each month at 6:00pm. Planning Commissioners are paid \$150.00 per month. You must be a resident of the Town of Bennett to apply.

A background check will be required for each candidate and will be sent via email after an application is received.

Email *

grider_lee@yahoo.com

Name *

First and Last Name

James Grider Lee

Email *

grider_lee@yahoo.com

Phone number *

303-903-1627

Street Address (No P.O. Boxes Please) *

467 Valley Way, Bennett, CO 80102

Occupation *

Photography Studio Owner

Name of Company or Firm (If none write N/A) *

Picture It Studios, Inc.

Prior Work Experience

Studio at Southlands, LLC, Co-op Photography Studio, owner-manager; Southlands Ventures, Inc., Photography Event Company; Beautiful Memories Photography, LLC, Partner, wedding photography company; Inter-Tel Communications, Sales & Marketing Rep; C&L Communications, Regional Territory Rep; AT&T Communications, Certified Account Executive; Brucas Uniforms, The Uniform Solution... for blue collar employees. General Manager; New York Life, Account Rep.

Education *

High School Diploma or GED

Some college

Bachelors Degree

Post Secondary Degree

Other:

How many years have you lived in Bennett? *

18

Have you previously served on any Town of Bennett board or commission? *

Yes

No

If so, what board or commission and what years did you serve?

Planning Commission, 2008-10; Town Board, 2010-2018; Planning Commission, 2018-2021

Referred by:

self

Please list any previous training, expertise or experience that you believe would be helpful to you if appointed to the Planning Commission. *

Previous service on Planning Commission & Town Board. Involvement and officer position on multiple HOA organizations in Baton Rouge, LA. In addition, I served as President of a City/Parish wide Association of 70 HOA's. While President of that group, I served on a Baton Rouge City "Blue Ribbon" Commission developing recommendations to improve City-Wide Governmental Solutions and Efficiencies. Currently here in Colorado, I serve on the Arapahoe County Open Space Commission.

The Town of Bennett uses a significant amount of technology and will be needed as a commission member (i.e., zoom, Google and Microsoft suites including gmail and excel, docusign, etc.) Please indicate your level of comfort with these technology platforms. *

1 2 3 4 5

Little Comfort and Skills Highly Comfortable and Skilled

Are you aware of the time commitment for the Planning Commission, and do you have the personal time to devote to this commitment? Do you have any conflicts with meetings falling generally on the 3rd Monday of the month? *

No Conflict

Why are you interested in serving on the Planning Commission? *

The Town of Bennett is a d has been experiencing a large amount commercial and residential growth. I would like to assist the Commission in steering that growth within the principles detailed in the Town's Comprehensive Plan.

What do you believe are the major concerns facing the Planning Commission today? *

Potential residential / commercial sprawl, traffic & transportation jams, flooding caused by residential growth, crowding within the town school system (no direct control), crowding of public spaces & childrens play areas, pressure by developers to ignore town building & construction requirements, prarie wild-fires that could endanger new commercial or residential areas.

Why are you the most qualified person for the office? *

My many years of Bennett residency, plus experience gained in serving on many types of boards & commissions throughout my life.

What is your perspective on the Town's Comprehensive Plan? *

It is an excellent guide to development and growth for the Town of Bennett.

Are you aware of the rate of growth for Bennett? What is your opinion about growth in Bennett? How would you rate Bennett's success in managing growth? *

Yes, I am quite aware of growth in and around the Town. Growth can be good for the Town, if managed according to the Comprehensive Plan. The recent update to the Comprehensive Plan will help the Town better manage growth by more accurately reflecting current conditions.

The Town's development regulations and review process include some architectural design review for commercial, industrial, and residential developments. What do you believe the Town's role should be in this process? *

While there is a process for allowing some variance of Comprehensive Plan guidelines, efforts should be made to tightly follow the plan, as much as possible.

Please tell us anything else you'd like to share.

Are you sure this is not an application for the U.S. Congress?
.....

This form was created inside of Town of Bennett.

Google Forms

Town of Bennett Planning Commission Appointment Application

Thank you for your interest in serving on the Town of Bennett Planning Commission.

In the Town of Bennett, the Commission consists of seven (7) members. The Planning Commission serves as an advisory body to the Board of Trustees. The commission reviews annexations, rezonings, subdivisions, planned unit developments and a long-range comprehensive plan. Roles and responsibilities are outlined in Chapter 16 of the Bennett Municipal Code. (https://library.municode.com/co/bennett/codes/municipal_code)

The Commission generally meets on the 3rd Monday of each month at 6:00pm. Planning Commissioners are paid \$150.00 per month. You must be a resident of the Town of Bennett to apply.

A background check will be required for each candidate and will be sent via email after an application is received.

Email *

clark93042@msn.com

Name *

First and Last Name

Wayne clark

Email *

clark93042@msn.com

Phone number *

303-748-5573

Street Address (No P.O. Boxes Please) *

880 Darco dr. Bennett CO 80102

Occupation *

Self

Name of Company or Firm (If none write N/A) *

NA

Prior Work Experience

Education *

High School Diploma or GED

Some college

Bachelors Degree

Post Secondary Degree

Other: _____

How many years have you lived in Bennett? *

20

Have you previously served on any Town of Bennett board or commission? *

Yes

No

If so, what board or commission and what years did you serve?

Referred by:

Please list any previous training, expertise or experience that you believe would be helpful to you if appointed to the Planning Commission. *

Degree in the school of hard knocks

The Town of Bennett uses a significant amount of technology and will be needed as a commission member (i.e., zoom, Google and Microsoft suites including gmail and excel, docusign, etc.) Please indicate your level of comfort with these technology platforms. *

1 2 3 4 5

Little Comfort and Skills Highly Comfortable and Skilled

Are you aware of the time commitment for the Planning Commission, and do you have the personal time to devote to this commitment? Do you have any conflicts with meetings falling generally on the 3rd Monday of the month? *

None

Why are you interested in serving on the Planning Commission? *

Gets me out of house

What do you believe are the major concerns facing the Planning Commission today? *

Staying on the comprehensive plan direction

Why are you the most qualified person for the office? *

Been their and done it

What is your perspective on the Town's Comprehensive Plan? *

It's on a good direction and need to be reviewed yearly

Are you aware of the rate of growth for Bennett? What is your opinion about growth in Bennett? How would you rate Bennett's success in managing growth? *

I think the we have the growth to warrant contact availability with office personnel

The Town's development regulations and review process include some architectural design review for commercial, industrial, and residential developments. What do you believe the Town's role should be in this process? *

Not changing the involvement we now have

Please tell us anything else you'd like to share.

Town of Bennett Planning Commission Appointment Application

Thank you for your interest in serving on the Town of Bennett Planning Commission.

In the Town of Bennett, the Commission consists of seven (7) members. The Planning Commission serves as an advisory body to the Board of Trustees. The commission reviews annexations, rezonings, subdivisions, planned unit developments and a long-range comprehensive plan. Roles and responsibilities are outlined in Chapter 16 of the Bennett Municipal Code.

(https://library.municode.com/co/bennett/codes/municipal_code)

The Commission generally meets on the 3rd Monday of each month at 6:00pm. Planning Commissioners are paid \$150.00 per month. You must be a resident of the Town of Bennett to apply.

A background check will be required for each candidate and will be sent via email after an application is received.

* Required

1. Email *

TRUCRE 6 @ B.M.A.L. COLO

2. Name *

First and Last Name

Scott Smith

3. Email *

Same as above.

4. Phone number *

303-885-6060

5. Street Address (No P.O. Boxes Please) *

767 Centennial way.

6. Occupation *

TRUCK DRIVER.

7. Name of Company or Firm (If none write N/A) *

FED ex FREIGHT.

8. Prior Work Experience

TOWN OF Bennett Commissioner.

9. Education *

Mark only one oval.

High School Diploma or GED

Some college

Bachelors Degree

Post Secondary Degree

Other: MILITARY.

10. How many years have you lived in Bennett? *

20

11. Have you previously served on any Town of Bennett board or commission? *

Mark only one oval.

Yes

No

12. If so, what board or commission and what years did you serve?

Planning And Zoning 2016[?] to now ^{roughly}

13. Referred by:

14. Please list any previous training, expertise or experience that you believe would be helpful to you if appointed to the Planning Commission. *

~~Has~~ Been on the BOARD FOR 2 terms? I think

15. The Town of Bennett uses a significant amount of technology and will be needed as a commission member (i.e., zoom, Google and Microsoft suites including gmail and excel, docusign, etc.) Please indicate your level of comfort with these technology platforms. *

Mark only one oval.

1 2 3 4 5

Little Comfort and Skills Highly Comfortable and Skilled

16. Are you aware of the time commitment for the Planning Commission, and do you have the personal time to devote to this commitment? Do you have any conflicts with meetings falling generally on the 3rd Monday of the month? *

None

17. Why are you interested in serving on the Planning Commission? *

to keep Grindell Lee
Some Body HAS to BABYSIT And keep
Grindell Lee occupied.

18. What do you believe are the major concerns facing the Planning Commission today? *

The growing of the town of Bennett

19. Why are you the most qualified person for the office? *

CAUSE I Dont think there are
THAT many Applicants

20. What is your perspective on the Town's Comprehensive Plan? *

21. Are you aware of the rate of growth for Bennett? What is your opinion about growth in Bennett? How would you rate Bennett's success in managing growth? *

good.

22. The Town's development regulations and review process include some architectural design review for commercial, industrial, and residential developments. What do you believe the Town's role should be in this process? *

23. Please tell us anything else you'd like to share.

This content is neither created nor endorsed by Google.

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**IN AND FOR THE TOWN OF BENNETT
AND THE STATE OF COLORADO**

STATE OF COLORADO)
COUNTY OF ADAMS) ss OATH OF OFFICE
COUNTY OF ARAPAHOE)

I, James Grider Lee, do solemnly swear or affirm that I will support the Constitution and the laws of the United States and of the State of Colorado, and the Ordinances of the Town of Bennett, and that I will faithfully perform all of the duties pertaining to the office of Planning and Zoning Commissioner of the Town of Bennett, Colorado to the best of my ability.

James Grider Lee
Planning and Zoning Commission

Subscribed and sworn to before me this
11 day of January, 2022.

Oath Administered By:

Christina Hart,
Town Clerk



**IN AND FOR THE TOWN OF BENNETT
AND THE STATE OF COLORADO**

STATE OF COLORADO)
COUNTY OF ADAMS) ss OATH OF OFFICE
COUNTY OF ARAPAHOE)

I, Wayne Clark, do solemnly swear or affirm that I will support the Constitution and the laws of the United States and of the State of Colorado, and the Ordinances of the Town of Bennett, and that I will faithfully perform all of the duties pertaining to the office of Planning and Zoning Commissioner of the Town of Bennett, Colorado to the best of my ability.

Wayne Clark
Planning and Zoning Commission

Subscribed and sworn to before me this
11 day of January, 2022.

Oath Administered By:

Christina Hart,
Town Clerk



**IN AND FOR THE TOWN OF BENNETT
AND THE STATE OF COLORADO**

STATE OF COLORADO)
COUNTY OF ADAMS) ss OATH OF OFFICE
COUNTY OF ARAPAHOE)

I, Scott Smith, do solemnly swear or affirm that I will support the Constitution and the laws of the United States and of the State of Colorado, and the Ordinances of the Town of Bennett, and that I will faithfully perform all of the duties pertaining to the office of Planning and Zoning Commissioner of the Town of Bennett, Colorado to the best of my ability.

Scott Smith
Planning and Zoning Commission

Subscribed and sworn to before me this
11 day of January, 2022.

Oath Administered By:

Christina Hart,
Town Clerk

Suggested Motion

I move to approve the appointment of James Grider Lee to the Town of Bennett Planning and Zoning Commission with a term ending on December 31, 2025.

I move to approve the appointment of Wayne Clark to the Town of Bennett Planning and Zoning Commission with a term ending on December 31, 2025.

I move to approve the appointment of Scott Smith to the Town of Bennett Planning and Zoning Commission with a term ending on December 31, 2025.

EXECUTIVE SESSION SCRIPT

(Note: Two-thirds of the quorum present must vote yes; the session may only occur at a regular or special meeting of the Board)

I MOVE TO GO INTO EXECUTIVE SESSION:

For the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators under C.R.S. Section 24-6-402(4)(e); Bennett Lodging, Ltd. Public Improvement Reimbursement and Tax Rebate Agreement.

Let's take a ____ minute break to give everyone time to get to a private location for the executive session.

BEGIN THE EXECUTIVE SESSION:

It's January 11, 2022, and the time is _____. For the record, I am the presiding officer, Mayor Royce D. Pindell. As required by the Open Meetings Law, this executive session is being electronically recorded.

Also present at this executive session are the following persons:

As a reminder, everyone participating in the executive session has a duty to maintain the confidentiality and privacy of this executive session. Because this is an electronic executive session, I am going to ask everyone to confirm for the record that they are in a private location where others cannot hear or see this executive session. Let's each take a turn and confirm this for the record.

ANNOUNCEMENT NO. 1

This is an executive session for the following purpose:

For the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators under C.R.S. Section 24-6-402(4)(e); Bennett Lodging, LTD. Public Improvement Reimbursement and Tax Rebate Agreement (PIRA).

I caution each participant to confine all discussion to the stated purpose of the executive session, and that no formal action may occur in the executive session.

If at any point in the executive session any participant believes that the discussion is going outside the proper scope of the executive session, please interrupt the discussion and make an objection.

ANNOUNCEMENT NO. 2

ANNOUNCEMENT TO BE MADE BY THE PRESIDING OFFICER
BEFORE CONCLUDING THE EXECUTIVE SESSION
(WHILE THE TAPE RECORDER IS STILL ON)

I hereby attest that this recording reflects the actual contents of the discussion at the executive session and has been made in lieu of any written minutes to satisfy the recording requirements of the Open Meetings Law.

The recording will be retained for a 90-day period.

The time is now _____, and we now conclude the executive session and return to the open meeting.

(turn off tape and return to open meeting)

ANNOUNCEMENT NO. 3

STATEMENT TO BE MADE BY THE PRESIDING OFFICER
UPON RETURNING TO THE OPEN MEETING

The time is now _____, and the executive session has been concluded. The participants in the executive session were:

For the record, if any person who participated in the executive session believes that any substantial discussion of any matters not included in the motion to go into the executive session occurred during the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, I would ask that you state your concerns for the record.

Seeing none, the next agenda item is...

STAFF REPORT



welcome neighbors.

TO: Mayor and Town of Bennett Board of Trustees
FROM: Rachel Summers, Deputy Town Administrator
DATE: January 11, 2022
SUBJECT: Ordinance 734-22 Authorizing the Third Amendment to the Public Improvements Reimbursement and Tax Rebate Agreement with Bennett Lodging, Ltd.

Background

The Board of Trustees approved the Public Improvements Reimbursement and Tax Rebate Agreement between the Town of Bennett and Bennett Lodging, Ltd. (the "Developer ") via Ordinance No. 693-19 on January 29, 2019. Under the agreement, the Town agreed to reimburse the Developer a portion of the sales and lodging tax collected on the property in exchange for the Developer's construction and completion of certain public improvements related to a Comfort Inn & Suites hotel. The original agreement stated that if the Developer failed to obtain a certificate of occupancy for the hotel on or before December 31, 2020 then the agreement would terminate and the Developer would not receive the sale and lodging tax reimbursement payments.

The Board approved the First Amendment to the Reimbursement Agreement dated September 22, 2020, providing a termination date if the Developer fails to obtain a certificate of occupancy for the Hotel on or before June 30, 2021. Additionally, the Board approved the Second Amendment to the Reimbursement Agreement dated May 11, 2021, providing that if the Developer fails to obtain a certificate of occupancy for the Hotel on or before December 31, 2021, then the Reimbursement Agreement shall terminate, and no payments shall be due or paid by the Town to Developer.

Status

Staff received an email dated December 10, 2021, including the attached correspondence from the hotel developer, Bruce Rahmani, which identified the Developer's eagerness to complete construction but continued to face unexpected material, labor, and plan updates. His request is for a six-month extension, understanding that he has a financial impact each day he is not open.

If the Board of Trustees finds it in the Town's best interest to approve a Third Amendment to the Agreement, the termination date for failure to obtain a certificate of occupancy will be amended to August 31, 2022. Understanding the continued construction challenges and the Developer's financial burden, staff recommends an eight-month extension on the PIRA.

Staff Recommendation

Staff values the ongoing business relationship with the Hotel Developer and the desired successful performance of the public reimbursement agreement. Additionally, the public improvement has been constructed at the sole cost of the Hotel Developer and is a current asset to the Town and the future

development of the Bennett Crossing Master Development. Furthermore, the financial impact has been significantly higher than anticipated since 2019, when the request for proposals was initiated for the original incentive package for a hotel. Therefore, staff recommends the approval of Ordinance 734-22 authorizing the Third Amendment to the Public Improvements Reimbursement and Tax Rebate Agreement with Bennett Lodging, Ltd.

Attachments

1. Comfort Inn, President, Bruce Rahmani's Consideration Letter
2. Third Amendment to the Public Improvements Reimbursement and Tax Rebate Agreement with Bennett Lodging, Ltd.
3. Ordinance 734-22

Colorado Hospitality Services, Inc.

10 E. 120th Avenue • Northglenn, Colorado 80233 • (303) 629-6332 • Fax (303) 255-2522

November 18, 2021

Ms. Rachel Summers
City of Bennett

Re: Bennett Hotel Project

Dear Rachel,

I am reaching out related to the PIRA and an extension request given we have been faced with multiple challenges resulting from Covid and inspection process. We have had significant delays due to:

1. continued supply chain issues causing multiple trades delays in receiving construction materials (in turn holding up other trades);
2. a shortage of skilled workers has resulted in additional delays in our construction progress; and
3. new requirements by the City of Bennett Inspector and inspection delays for various reasons. The new requirements prompt new plans from the designer (also short-staffed) in addition to plan review by the State and new installation with contractors. We have done our best to make progress with the imposed restrictions.

The delays have been extremely costly resulting from construction loan term extensions, additional general conditions and overhead directly attributable to the delays, and redesign of certain building components required by the Town of Bennett during the construction process. I more than anyone want to get the hotel open and operational and believe that we will be open between Spring and Summer, 2022. In effort to play it safe in case we run into any future delays, my email serves as a request for a six-month extension on PIRA until June 30, 2022. While I am optimistic the hotel will open in the Spring, I ask for June as a conservative measure to ensure that we use your time wisely as well as the Board of Trustees in our extension request. I appreciate everyone's patience and understanding with the delay and the uncertainties of the labor market and supply chain.

Best regards,



Bruce Rahmani
President

Development • Management • Construction • Consultant



THIRD AMENDMENT TO PUBLIC IMPROVEMENTS REIMBURSEMENT AND TAX REBATE AGREEMENT

THIS THIRD AMENDMENT TO PUBLIC IMPROVEMENTS REIMBURSEMENT AND TAX REBATE AGREEMENT (this “Third Amendment”), is made and entered into as of the ____ day of _____, 2022, by and between the TOWN OF BENNETT, COLORADO, a municipal corporation of the State of Colorado (the “Town”), and BENNETT LODGING, LTD, a Colorado limited partnership (the “Developer”).

WHEREAS, the Town and Developer entered into that certain Public Improvements Reimbursement and Tax Rebate Agreement dated January 29, 2019, the First Amendment to Public Improvements Reimbursement Agreement dated September 22, 2020, and the Second Amendment to the Public Improvement Reimbursement Agreement dated May 11, 2021 (collectively, the “Reimbursement Agreement”) related to the Developer’s construction and completion of a Comfort Inn & Suites hotel (the “Hotel”); and

WHEREAS, the Reimbursement Agreement provides that if the Developer fails to obtain a certificate of occupancy for the Hotel on or before December 31, 2021, then the Reimbursement Agreement shall terminate and no payments shall be due or paid by the Town to Developer; and

WHEREAS, the Developer has commenced construction on the Hotel and it is nearing completion, but the Developer has experienced unforeseeable construction delays due to the global COVID-19 pandemic and material shortage; and

WHEREAS, the Developer requested and the Town has agreed to grant Developer a eight (8) month extension to obtain a certificate of occupancy for the Hotel; and

WHEREAS, the parties desire to amend the Reimbursement Agreement to revise the deadline for obtaining a certificate of occupancy.

NOW, THEREFORE, in consideration of the recitals, promises, covenants and undertakings herein set forth, and other good and valuable consideration, which is hereby acknowledged and receipted for, the Town and the Developer agree as follows:

1. The foregoing recitals are incorporated herein. Capitalized terms not defined herein shall have that meaning as set forth in the Reimbursement Agreement.
2. Section 6.01(a) of the Reimbursement Agreement is hereby amended to read as follows (words to be added are underlined; words to be deleted are ~~stricken through~~):

Section 6.01. Termination. This Agreement shall terminate and no payments shall be due or paid by the Town to Developer upon the earliest date of any of the following:

Formatted: Justified

(a) Failure to obtain a certificate of occupancy for the Hotel on or prior to ~~August 31, 2022~~ December 31, 2021.

Formatted: Underline

3. This Third Amendment may be executed in one or more counterparts, and when all counterparts are so signed, the sum of them shall be considered the original, and shall be deemed to have been signed as one integrated document.

4. Except as amended by this Third Amendment, the Reimbursement Agreement shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Third Amendment as of the day and year set forth above.

TOWN OF BENNETT, COLORADO

By: _____
Royce D. Pindell, Mayor

ATTEST:

Christina Hart, Town Clerk

BENNETT LODGING, LTD
A Colorado Limited Partnership

By: Colorado Hospitality Group, Inc.,
its General Partner

By: _____
Bruce Rahmani, President

ACKNOWLEDGEMENT

STATE OF COLORADO)
)ss
COUNTY OF _____)

The above and foregoing signature of Bruce Rahmani was subscribed and sworn to before me this _____ day of _____, 2022.

Witness my hand and official seal.

My commission expires on: _____.

(SEAL) _____

**THIRD AMENDMENT TO PUBLIC IMPROVEMENTS REIMBURSEMENT AND TAX
REBATE AGREEMENT**

THIS THIRD AMENDMENT TO PUBLIC IMPROVEMENTS REIMBURSEMENT AND TAX REBATE AGREEMENT (this “Third Amendment”), is made and entered into as of the ____ day of _____, 2022, by and between the TOWN OF BENNETT, COLORADO, a municipal corporation of the State of Colorado (the “Town”), and BENNETT LODGING, LTD, a Colorado limited partnership (the “Developer”).

WHEREAS, the Town and Developer entered into that certain Public Improvements Reimbursement and Tax Rebate Agreement dated January 29, 2019, the First Amendment to Public Improvements Reimbursement Agreement dated September 22, 2020, and the Second Amendment to the Public Improvement Reimbursement Agreement dated May 11, 2021 (collectively, the “Reimbursement Agreement”) related to the Developer’s construction and completion of a Comfort Inn & Suites hotel (the “Hotel”); and

WHEREAS, the Reimbursement Agreement provides that if the Developer fails to obtain a certificate of occupancy for the Hotel on or before December 31, 2021, then the Reimbursement Agreement shall terminate and no payments shall be due or paid by the Town to Developer; and

WHEREAS, the Developer has commenced construction on the Hotel and it is nearing completion, but the Developer has experienced unforeseeable construction delays due to the global COVID-19 pandemic and material shortage; and

WHEREAS, the Developer requested and the Town has agreed to grant Developer a eight (8) month extension to obtain a certificate of occupancy for the Hotel; and

WHEREAS, the parties desire to amend the Reimbursement Agreement to revise the deadline for obtaining a certificate of occupancy.

NOW, THEREFORE, in consideration of the recitals, promises, covenants and undertakings herein set forth, and other good and valuable consideration, which is hereby acknowledged and receipted for, the Town and the Developer agree as follows:

1. The foregoing recitals are incorporated herein. Capitalized terms not defined herein shall have that meaning as set forth in the Reimbursement Agreement.

2. Section 6.01(a) of the Reimbursement Agreement is hereby amended to read as follows (words to be added are underlined; words to be deleted are ~~stricken through~~):

Section 6.01. Termination. This Agreement shall terminate and no payments shall be due or paid by the Town to Developer upon the earliest date of any of the following:

(a) Failure to obtain a certificate of occupancy for the Hotel on or prior to August 31, 2022 ~~December 31, 2021~~.

3. This Third Amendment may be executed in one or more counterparts, and when all counterparts are so signed, the sum of them shall be considered the original, and shall be deemed to have been signed as one integrated document.

4. Except as amended by this Third Amendment, the Reimbursement Agreement shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Third Amendment as of the day and year set forth above.

TOWN OF BENNETT, COLORADO

By: _____
Royce D. Pindell, Mayor

ATTEST:

Christina Hart, Town Clerk

BENNETT LODGING, LTD
A Colorado Limited Partnership

By: Colorado Hospitality Group, Inc.,
its General Partner

By: _____
Bruce Rahmani, President

ACKNOWLEDGEMENT

STATE OF COLORADO)
)ss
COUNTY OF _____)

The above and foregoing signature of Bruce Rahmani was subscribed and sworn to before me this _____ day of _____, 2022.

Witness my hand and official seal.

My commission expires on: _____.

(SEAL) _____

ORDINANCE NO. 734-22

AN ORDINANCE APPROVING A THIRD AMENDMENT TO THE PUBLIC IMPROVEMENTS REIMBURSEMENT AND TAX REBATE AGREEMENT WITH BENNETT LODGING, LTD.

WHEREAS, pursuant to Ordinance No. 693-19 adopted on January 29, 2019, the Board of Trustees approved a Public Improvements Reimbursement and Tax Rebate Agreement between the Town of Bennett and Bennett Lodging, Ltd. (“Agreement”); and

WHEREAS, pursuant to Ordinance No. 716-20 adopted on September 22, 2020, the Board of Trustees approved a First Amendment to the Agreement; and

WHEREAS, pursuant to Ordinance No. 726-21 adopted on May 11, 2021, the Board of Trustees approved a Second Amendment to the Agreement; and

WHEREAS, Bennett Lodging has requested that the Agreement be amended to extend the time for obtaining a certificate of occupancy; and

WHEREAS, the Board of Trustees finds that it is in the Town’s best interest to approve a Third Amendment to the Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BENNETT, COLORADO, AS FOLLOWS:

Section 1. The Board of Trustees hereby approves the Third Amendment to the Public Improvements Reimbursement and Tax Rebate Agreement between the Town of Bennett and Bennett Lodging, Ltd. (“Third Amendment”) in substantially the same form of such Third Amendment attached hereto.

Section 2. The Mayor is hereby authorized to execute the Third Amendment, except that the Mayor is hereby further granted the authority to negotiate and approve such revisions to said Third Amendment as the Mayor, Town Administrator and Town Attorney determines are necessary or desirable for the protection of the Town, so long as the essential terms and conditions of the Third Amendment are not altered.

Section 3. All prior ordinances or parts of such prior ordinances, codes or parts of codes in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. If any paragraph, section, sub-section, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid, unconstitutional and/or unenforceable, such provisions shall be deemed to be separate, distinct and independent and the remaining provisions of this Ordinance shall continue in full force and effect.

INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED, BY TITLE ONLY, THIS 11 DAY OF JANUARY, 2022.

TOWN OF BENNETT

Royce D. Pindell, Mayor

ATTEST:

Christina Hart, Town Clerk

Suggested Motion

I move to approve Ordinance No. 734-22 – An ordinance approving a third amendment to the Public Improvements Reimbursement and Tax Rebate Agreement with Bennett Lodging, Ltd.